

Cv-04 5281

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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DAVID RODRIGUEZ

FILED
Petitioner,
IN CLERK'S OFFICE
U.S. DISTRICT COURT E. Case No. _____

-against-



DEC 03 2004

PETITION FOR WRIT OF HABEAS
CORPUS PURSUANT TO 28 U.S.C.
§2241 AND WRIT OF MANDAMUS
PURSUANT TO 28 U.S.C. §1361

LONG ISLAND OFFICE

THE FEDERAL BUREAU OF PRISONS,
HARLEY G. LAPPEN, in his official
capacity as Director of the Federal
Bureau of Prisons, and FREDERICK,
MENIFEE in his official capacity as the
Warden of Federal Correctional
Institution – Otisville, NY,

SEYBERT, J.
J. ORENSTEIN, M.J.

Respondents.

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1. The name and location of court which entered judgment of conviction under which David Rodriguez ("Rodriguez") is presently confined is the Eastern District of New York, 100 Federal Plaza, Central Islip, New York 11722;
2. The date of conviction was September 6, 2000;
3. The length of sentence is 51 months; the Sentencing Judge was Judge Dennis Hurly;
4. The nature of offenses for which Rodriguez was convicted were conspiracy to defraud the U.S. in violation of 18 U.S.C §371 and filing false tax return in violation of 26 U.S.C. §1206(1);
5. Rodriguez was sentenced on both counts of 18 U.S.C. §371 and 26 U.S.C. §1206(1) of his indictment;
6. Rodriguez does not have any future sentence to serve after he completes the sentence imposed by the judgment under attack;
7. Rodriguez petitions to be placed in a halfway house or Community Confinement Center ("CCC") for six months as opposed to four months on the grounds that the BOP policy change regarding CCC placement is invalid because (1) it relies on an erroneous interpretation

of the underlying law, (2) violates the Administrative Procedure Act, because it was promulgated without notice and comment, and (3) violates the *Ex Post Facto* Clause of the United States Constitution because it retroactively eliminated Rodriguez's eligibility for at least two months of halfway house placement.

WHEREFORE, petitioner prays that the Court grant petitioner relief to which he may be entitled in this proceeding.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: November 26, 2004
Bronx, New York


KIM E. RICHMAN, ESQ. (KER-9774)
of Counsel
Law Offices of Murray Richman
on behalf of
David Rodriguez
Inmate ID#: 41034-053
Federal Correctional Institution-
Otisville, NY
D.O.B.: 03-08-1957